IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.R.UDAYABHANU

TUESDAY, THE 27TH MARCH 2007 / 6TH CHAITHRA 1929

Crl.Rev.Pet.No. 235 of 1996()

CRA.158/1990 & 160/90 of SESSIONS COURT, KOTTAYAM
CC.109/1986 of JUDL.MAGISTRATE OF FIRST CLASS, PALA

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REVN. PETITIONER: APPELLANT/ACCUSED NO.1

VIJAYAKUMARAN NAIR @ APPU, AGED 38 YEARS
S/O.BALAKRISHNAN NAIR, NOW RESIDING AT VANDANATHU HOUSE
VENGAPPARA P.O., KODUVALLY, KOZHIKODE.

BY ADV. SRI.THOMAS V.JACOB,SUJITH MATHEW JOSE

RESPONDENT:

KERALA STATE
REPRESENTED BY THE DIRECTOR OF PROSECUTIONS
HIGH COURT OF KERALA.

BY PUBLIC PROSECUTOR SRI.AMJAD ALI

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON 27/03/2007, ALONG WITH CRRP NO.231 OF 1996 THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

CRRP235/96

ORDER ON CRL.M.P.NO.652/96 IN CRL.R.P.NO.235/96

DISMISSED

27.3.2007 SD/- K.R.UDAYABHANU, JUDGE

/TRUE COPY/

P.A. TO JUDGE

K.R.UDAYABHANU, J

CRL.R.P.No.235 of 1996

&

CRL.R.P.No.231 of 1996

Dated this the 27th day of March, 2007

ORDER

Revision petitioner in Crl.R.P.No.235/96 is the first accused in C.C.109/86 in the file of the Judicial First Class Magistrate Court, Pala and the revision petitioner in Crl.R.P.No.231/96 is the second accused in the above case. They have been convicted for the offences under Sections 419, 420, 467, 468, 471 and 477 (A) read with Section 34 IPC and sentenced to undergo R.I. for one year each for each of the offences with direction that the sentence shall run concurrently. The appeals filed by the accused separately vide Crl.A.No.158/90 and Crl.A.No.160/90 had disposed by a common order dismissing the same and confirming the conviction and sentence imposed.

2. The prosecution case is that the first accused serving as a peon of the Kottayam District Co-operative Bank at its Erattupetta branch managed to get possession of Ext. P2 cheque sent by Meenachil Co-operative Bank, Poonjar, Thekkekara

branch for a sum of Rs.1,00,000/- for remitting the same in its credit in the gold loan account and managed to alter the details by incorporating the name George Thomas, Plathottathil, rubbing off the original writing 'yourself' and also one digit in the date and got the same encashed through A2 by impersonation and obtained Rs.60,000/- in cash and Rs.40,000/- by way of D/D drawn on Kottayam District Co-operative Bank, Pala branch. The evidence adduced in the matter consisted the testimony of PW's 1 to 47 and Exts. P1 to P47, and MO's 1 to 10. The defence has examined DW's 1 to 4.

3. The evidence with respect to the complicity of the accused mainly consisted of the testimony of the officials of the Erattupetta branch of Kottayam District Co-operative Bank, PWs' 7, 9 and 10 and the officials of Pala branch of the District Co-operative Bank wherein the D/D was encashed. PWs' 7 and 9 who were the officials of the bank in which the first accused is employed and wherein the cheque was encashed have testified with respect to the presence of both the accused on 9.4.1981, the date on which the cheque and the D/D were encashed. It is

the evidence of PW7, the accountant, who was in charge of the Manager and PW9, the cashier, on the particular date in the morning that A1 and A2 were present in the bank and it is the duty of A1 to collect the mail and that A1 introduced A2 as the payee. It is the version of the above witnesses that on the particular day, there was no sufficient cash to honour the cheque and A2 had waited for sometime and by that time PW13 came to the bank and deposited certain cash and even then only a sum of Rs.60,000/- was available and that for the balance amount of Rs.40,000/- D/D drawn on Kottayam District Co-operative Bank, Pala branch as well as the advice memo was handed over to A2. They have also been identified by PWs' 11, 12 and 13, the officials of Pala branch of the Kottayam District Co-operative Bank wherein the draft was encashed. A sum of Rs.58,000/- was recovered as per the confession statement of A1.

4. The major contention of the counsel for the revision petitioner is that there is no clear evidence as to the identity and also as to the forgery committed. It is the contention that PW7 has stated that she has identified him for the first time in the

court. With respect to the proof of forgery it is pointed out that the best of evidence i.e., of the handwriting expert has not been obtained.

5. I find that PW7 was examined on 5.11.1985 i.e, about 4 years after the incident and PW9 was examined on 23.1.1990, PWs' 11, 12 and 13 on 6.2.1990 etc. I find that it is the evidence of PW9 that he has seen the accused (A2) after he was arrested. i.e, in May 1981. The identity dispute can be raised only with respect to A2 as A1 is a staff of the particular branch of the bank. Just the fact that A2 has been identified in court by PW7 is no reason to reject the testimony regarding identification especially as the incident has taken place in day time at the bank and also as she had sufficient opportunity to get acquainted with A2 and also as it was not a normal case of encashing cheque but involved introduction by A1 and waiting for cash, encashing the cheque partly in cash and partly in draft. PW9 has also identified A2 after he was arrested. That is within a month of the incident. The fact that A2 was introduced by A1 who is the peon and the only peon of the particular branch. It is also a

circumstance that would have made PW7 and PW9 to recollect the incident and the features of A2. The evidence of PW9 and PWs' 11 and 13 as the identity of A2 was also found convincing by the courts below. Hence the above contention as to the lack of evidence as to identity is without merit.

6. The contention that the absence of forensic examination as to handwriting is fatal to the prosecution also cannot be upheld. There is no law that any particular form of evidence should be insisted for proof of the particular fact. In the circumstances, I find no reasons to interfere in the concurrent findings of the court below in exercise of the revisional jurisdiction of this court. The conviction is confirmed.

7. Considering the fact that more than 25 years have elapsed since the commencement of the proceedings and that so far the accused were facing the criminal proceedings, the sentence imposed is liable to be modified. It is submitted that the petitioners have already undergone pretrial detention. In the circumstances, the sentence imposed on A1 is modified to imprisonment already undergone and to pay a fine of Rs.5,000/-

each for each of the offences under Sections 419, 420, 467, 468, 471 and 477(A) read with Section 34 IPC and in default, to undergo simple imprisonment for six months for each of the offences. The sentence imposed on A2 is modified to imprisonment already undergone and to pay a fine of Rs.3,000/- for each of the offences. i.e, under Section 419, 420, 467, 468, 471 and 477(A) read with Section 34 IPC and in default, to undergo simple imprisonment for three months each.

The revision petition is disposed of accordingly.

K.R.UDAYABHANU,
JUDGE

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